

STATE OF NEW YORK

4867--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 24, 2023

Introduced by M. of A. KELLES, KIM, ZEBROWSKI, WEPRIN, SEAWRIGHT, SIMON, STECK, JOYNER, DINOWITZ, LAVINE, REYES, ARDILA, CRUZ, SHIMSKY, ZINERMAN, LEVENBERG, AUBRY, EPSTEIN, GIBBS, SILLITTI -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the court of claims act, the public housing law, the correction law, and the civil service law, in relation to the availability of certain benefits to exonerees; and to repeal certain provisions of the court of claims act relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 8-b of the court of claims act is amended by adding a new subdivision 1-a to read as follows:

1-a. When used in this section, unless otherwise required by the context, or unless a contrary intent is expressly declared in the provision to be construed, the term "exoneree" shall mean any person who has been granted a judgment in a claim for unjust conviction and imprisonment under this section.

§ 2. Subparagraphs (i) and (ii) of paragraph (b) of subdivision 5 of section 8-b of the court of claims act, as added by chapter 1009 of the laws of 1984, are amended to read as follows:

(i) [~~he has~~ they have been pardoned upon the ground of innocence of the crime or crimes for which [~~he was~~ they were sentenced and which are the grounds for the complaint; or (ii) [~~his~~ their judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either [~~he was~~ they were found not guilty at the new trial or [~~he was~~ they were not retried and the accusatory instrument dismissed; provided that the judgement of conviction was reversed or vacated, and the accusatory instrument was

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [~~-~~] is old law to be omitted.

LBD07170-02-3

1 dismissed, on any of the following grounds: (A) [~~paragraph (a), (b),~~
2 ~~(e), (e) or (g) of~~] subdivision one of section 440.10 of the criminal
3 procedure law; or (B) subdivision [~~one (where based upon grounds set~~
4 ~~forth in item (A) hereof),~~] two, three (where the count dismissed was
5 the sole basis for the imprisonment complained of) or five of section
6 470.20 of the criminal procedure law; or (C) comparable provisions of
7 the former code of criminal procedure or subsequent law; or (D) the
8 statute, or application thereof, on which the accusatory instrument was
9 based violated the constitution of the United States or the state of New
10 York; and

11 § 3. Paragraph (c) of subdivision 5 of section 8-b of the court of
12 claims act, as added by chapter 1009 of the laws of 1984, is amended to
13 read as follows:

14 (c) [~~he~~] they did not commit any of the acts [~~charged in the accusato-~~
15 ~~ry instrument~~] for which they were convicted or [~~his~~] their acts or
16 omissions charged in the accusatory instrument did not constitute a
17 felony or misdemeanor against the state; and

18 § 4. Paragraph (d) of subdivision 5 of section 8-b of the court of
19 claims act, as added by chapter 1009 of the laws of 1984, is amended to
20 read as follows:

21 (d) [~~he~~] they did not by [~~his~~] their own [~~conduct~~] misconduct cause or
22 bring about [~~his~~] their conviction. For purposes of this subdivision, a
23 confession, admission or plea of guilty made or entered by the claimant
24 may not be considered evidence of misconduct unless such confession,
25 admission or plea of guilty was made or entered knowingly, voluntarily,
26 without duress and with the intent to prevent the investigation or pros-
27 ecution: (i) of the claimant for a crime unrelated to the crime or
28 crimes that were the subject of such confession, admission or plea of
29 guilty; or (ii) of another person who the claimant, at the time of such
30 confession, admission or plea, believed to be the perpetrator of the
31 crime or crimes that were the subject of such confession, admission or
32 plea.

33 § 5. Subdivision 7 of section 8-b of the court of claims act is
34 REPEALED.

35 § 6. Subdivision 6 of section 8-b of the court of claims act, as added
36 by chapter 1009 of the laws of 1984, is amended to read as follows:

37 6. If the court finds that the claimant is entitled to a judgment, it
38 shall award damages in such sum of money as the court determines will
39 fairly and reasonably compensate [~~him~~] them, as well as any benefits to
40 which the claimant is entitled under this section.

41 § 7. Section 8-b of the court of claims act is amended by adding ten
42 new subdivisions 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 to read as
43 follows:

44 7. Any exoneree shall be entitled to have all records of their
45 conviction sealed pursuant to section 160.50 of the criminal procedure
46 law.

47 8. No benefits paid pursuant to this article shall be considered gross
48 income as defined in section six hundred twelve of the tax law, nor
49 shall they be taxable by any entity.

50 9. No benefits paid pursuant to this article shall be reduced by any
51 amount to compensate the state for the costs of incarcerating the exon-
52 eree.

53 10. A person who properly presents a claim pursuant to subdivisions
54 three and four of this section shall be entitled to receive a payment of
55 ten thousand dollars per month from the state for each month between the
56 time a claim is filed and the final judgment is recorded, provided

1 however that on motion of the attorney general the court may stay such
2 payment on the grounds that such claim is frivolous, that the claimant
3 is unlikely to prevail on the merits, or that the period of wrongful
4 incarceration was so short that significant damages and benefits should
5 not be awarded.

6 11. An exoneree found by the court to have served a period of wrongful
7 incarceration of more than one year or to have experienced significant
8 hardship resulting from such incarceration shall be ordered by the court
9 to be enrolled in the health benefit plan established pursuant to
10 section one hundred sixty-one of the civil service law, the supplementa-
11 ry health benefit plan established pursuant to section one hundred
12 sixty-three-a of the civil service law, and the dental insurance plan
13 established pursuant to section one hundred sixty of the civil service
14 law. The full cost of premium or subscription charges for such coverage
15 shall be paid by the state.

16 12. The exoneree shall be entitled to reasonable attorney's fees
17 incurred in the process of vacating or reversing the judgment against
18 them. The exoneree shall petition the court of claims in seeking reason-
19 able attorney's fees as against the state. Any award of attorney's fees
20 shall be reimbursable by the state.

21 13. An exoneree who enrolls at any institution of the city university
22 of New York or any institution of the state university of New York shall
23 be eligible for a tuition award in an amount equal to the tuition
24 charged at such institution, the mandatory fees charged at such institu-
25 tion and the non-tuition cost of attendance at such institution or
26 college, provided that the scholarship shall not exceed an amount that
27 is equal to the total cost of attendance determined for federal Title IV
28 student financial aid purposes.

29 14. Any and all benefits made available to parolees through the divi-
30 sion of parole shall also be made available to exonerees. Any state
31 contract with a service provider for parolees must also require the
32 service provider to also serve exonerees.

33 15. Nothing in this act shall be construed to prevent an exoneree from
34 pursuing further civil lawsuits against any state agencies or employees
35 for any reason, including in connection with the wrongful conviction.

36 16. (a) Any person claiming compensation and additional benefits under
37 this section based on a pardon that was granted on or after the effec-
38 tive date of this subdivision or the dismissal of an accusatory instru-
39 ment that occurred on or after the effective date of this subdivision
40 shall file their claim within three years after the pardon or dismissal.

41 (b) Any person who obtained a judgment under this section prior to the
42 effective date may file for additional benefits under this section with-
43 in two years after such effective date.

44 (c) Any person whose claim was dismissed prior to the effective date
45 of this section on the grounds that the claim did not satisfy clause (A)
46 or (B) of subparagraph (ii) of paragraph (b) of subdivision five of this
47 section may refile their claim under this section within two years after
48 the effective date of this subdivision.

49 (d) Any person who did not previously file a claim because their claim
50 did not satisfy clause (A) or (B) of subparagraph (ii) of paragraph (b)
51 of subdivision five of this section and is barred by the existing stat-
52 ute of limitations, may file their claim under this section within two
53 years after the effective date of this subdivision.

54 § 8. Subdivision 1 of section 156 of the public housing law is amended
55 by adding a new paragraph c to read as follows:

c. also for any exoneree as defined in subdivision one-a of section eight-b of the court of claims act. Any benefits due to such exoneree shall not be included in the calculation of probable aggregate income used to determine eligibility for these dwellings. Exonerees shall be assigned the highest need-based priority for placement in a dwelling unit.

§ 9. Subdivision 4 of section 404 of the correction law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

4. Every incarcerated individual who has received mental health treatment pursuant to this article within three years of ~~[his or her]~~ their anticipated release date from a state correctional facility and every exoneree, as defined in subdivision one-a of section eight-b of the court of claims act, shall be provided with mental health discharge planning and, when necessary, an appointment with a mental health professional in the community who can prescribe medications following discharge and sufficient mental health medications and prescriptions to bridge the period between discharge and such time as such mental health professional may assume care of the patient. Incarcerated individuals who have refused mental health treatment may also be provided mental health discharge planning and any necessary appointment with a mental health professional.

§ 10. Subdivision 2 of section 163 of the civil service law, as amended by section 6 of part S of chapter 57 of the laws of 2023, is amended to read as follows:

2. The contract or contracts shall provide for health benefits for retired employees of the state and of the state colleges of agriculture, home economics, industrial labor relations and veterinary medicine, the state agricultural experiment station at Geneva, and any other institution or agency under the management and control of Cornell university as the representative of the board of trustees of the state university of New York, and the state college of ceramics under the management and control of Alfred university as the representative of the board of trustees of the state university of New York, and their spouses and dependent children as defined by the regulations of the president, and exonerees as defined in subdivision one-a of section eight-b of the court of claims act, on such terms as the president may deem appropriate, and the president may authorize the inclusion in the plan of the employees and retired employees of public authorities, public benefit corporations, school districts, special districts, district corporations, municipal corporations excluding active employees and retired employees of cities having a population of one million or more inhabitants whose compensation is or was before retirement paid out of the city treasury, or other appropriate agencies, subdivisions or quasi-public organizations of the state, including active members of volunteer fire and volunteer ambulance companies serving one or more municipal corporations pursuant to subdivision seven of section ninety-two-a of the general municipal law, and their spouses and dependent children as defined by the regulations of the president. Notwithstanding any law or regulation to the contrary, active members of volunteer ambulance companies serving one or more municipal corporations pursuant to subdivision seven of section ninety-two-a of the general municipal law shall be eligible for health benefits regardless of the amount of funds derived from public sources. Any such corporation, district, agency or organization electing to participate in the plan shall be required to pay its proportionate share of the expenses of administration of the plan in such amounts and at such times as determined and fixed by the president. All amounts payable

1 for such expenses of administration shall be paid to the commissioner of
2 taxation and finance and shall be applied to the reimbursement of funds
3 previously advanced for such purposes. Neither the state nor any other
4 participant in the plan shall be charged with the particular experience
5 attributable to the employees of the participant, and all dividends or
6 retroactive rate credits shall be distributed pro-rata based upon the
7 number of employees of such participant covered by the plan.
8 § 11. This act shall take effect immediately and, except as otherwise
9 expressly provided in this act, shall apply to convictions entered
10 before, on or after such effective date.